

Internal Revenue Service

Department of the Treasury

District
Director

Delaware-Maryland District

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Contact Telephone Number:

In Reply Refer to:

Date: AUG - 1 2000

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

You incorporated in the [REDACTED] for the following purposes

- To create, form and establish a task force to aid, assist and support the charitable work of qualified organizations and individuals whose primary purpose is designed, calculated and dedicated to the improvement of the quality of life for the residents of [REDACTED]; to solicit, collect and otherwise raise money;
- To sponsor and conduct fund raising events and activities to accomplish the charitable work of the corporation; to encourage citizen participation and involvement in community improvement programs and in local and state government.
- To hold, conduct and organize meetings, discussions and forums to consider community opinion on contemporary beautification and restoration issues.
- To aid, assist, cooperate, co-sponsor and otherwise engage in concerted action with private and governmental agencies, organizations and groups on civic, recreational, beautification and other programs.
- To improve and enrich the quality of life for the residents of [REDACTED]

[REDACTED]

To solicit, collect and otherwise raise money for the purposes of the corporation and other civic purposes and generally to endeavor to promote the development, beautification and preservation of parks and other common areas in [REDACTED] for future generations.

The attachment to Page 2 of Form 1023 states, "At present the organization has only held one event the [REDACTED]. The festival has been an annual event for four years, but the organization has only run it the past year, although the board members did run it for two years."

[REDACTED] is a safe alternative for trick or treating. We built a haunted house in 1998, which we store at [REDACTED] until the next festival. At the festival there is also a chance for participants to purchase tickets for rides from the ride vendors themselves. The event takes place yearly on [REDACTED] in [REDACTED].

Your newsletter reinforces the fact that the festival is the only activity of the organization.

Your source of income has been from local businesses, residents of the community and local elected officials. Your primary expenditure, sixty-eight percent (68%), has been the [REDACTED].

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

[REDACTED]

[REDACTED]

In Allgemeiner Arbeiter Verein v. Commissioner, 25 T. C. 371 (1955), the court held that an organization which was formed to provide mutual assistance in case of sickness or death of its members, but which expanded its scope to include intensive social activities did not qualify for exemption. The rationale behind the ruling was that the organization could not "fit" itself within one section of the Code, thus, *it failed the exclusiveness test required under IRC 501(c)(3)*.

Revenue Ruling 68-224, Cumulative Bulletin, 1968-1, page 262, held a non-profit organization that conducted an annual festival centered around regional customs and traditions may qualify for exemption from Federal income tax under section 501(c)(4) of the Internal Revenue code of 1954.

Your letter dated June 20, 2000 under the signature of your Power of Attorney states, "After further discussion with my client, the following are examples of the past, present and planned activities of this organization."

- In the past, the corporation has made monetary donations to [REDACTED] and a local charitable organization known as [REDACTED].
- The corporation obtains grants from other Not-for-Profit organizations in order to conduct free, educational programs to benefit the residents of [REDACTED]. An example of such a program is the corporation sponsored activity, which instructs children and adults in plant identification and other environmental issues.
- The corporation recently worked in conjunction with [REDACTED] (a local elementary school) to create a rooftop garden through which inner city children learn about plants and gardening.
- The corporation sponsors the "[REDACTED]" program whereby children come to a local park to plant gardens, learn about the environment and share lunch all free of charge.
- The corporation works in conjunction with the District Attorney's office whereby teens who have been arrested for minor infractions complete community service projects in lieu of jail sentences.
- The corporation donates tools, plants and other necessary materials to the parks departments to help offset the costs of community maintenance.

Based upon the evidence submitted we hold that you do not meet the requirements of section 501(c)(3) of the Code.

As stated in your application and newsletter the only activity of the organization has been the [REDACTED]. There is no evidences or facts (documents or finances) to substantiate the above mentioned activities as sufficient in nature to meet the "exclusiveness" requirements of 501(c)(3).

While your organization is not providing death benefits as in Allgemeiner Arbeiter Verein, the rationale is the same; you are not operated exclusively for an educational, charitable or scientific purpose.

In general, an organization, which applies for recognition of exemption, has the burden of proving that it clearly meets all the requirements of the particular Code section under which it has applied. See Kenner v. Commissioner, 318 F. 2d 632 (7th Cir. 1963).

Your organization's activities are not exclusively educational, charitable, scientific or religious. Hence you are not operated within the purview of 501(c)(3) of the Code. Thus, based on the cited code, regulations, court cases and revenue rulings, you have failed the operational test under section 501(c)(3) of the Code.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If someone who is not one of your principal officers will represent you, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Sincerely,

Steven T. Miller
Steven T. Miller
Director, Exempt Organizations

Enclosure: Publication 892

cc: [REDACTED]
[REDACTED]

[REDACTED]